

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Maytag)	
	District 6, Map 57, Control Map 57, Parcel 24.02,)	
	Special Interest 000 & 003)	Madison County
	Industrial Property)	
	Tax year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The Madison County Board of Equalization ("county board") has valued the subject property for tax purposes as follows:

ID	LAND VALUE	IMPRVMT. VALUE	TOTAL VALUE	ASSESSMENT
057-24.02	\$346,800	\$7,786,500	\$8,133,300	\$3,253,320
057-24.02-003	\$0	\$1,960,500	\$1,960,500	\$ 784,200

On August 29, 2005, the State Board of Equalization ("State Board") received an appeal on behalf of the property owner.

The undersigned administrative judge conducted a hearing of this matter on June 21, 2006 in Jackson. The appellant Maytag was represented by registered agent Anna Westbrook, of Deloitte Tax LLP (Nashville). Deputy Assessor Billie Collins, assisted by State Division of Property Assessments employees Mark Volner and Ray Weatherly, appeared on behalf of the Madison County Assessor of Property.

Findings of Fact and Conclusions of Law

The 50-acre parcel in question is located on F. E. Wright Drive in Jackson, within a mile of an Interstate 40 exit. Situated on this land is a pre-finished metal dishwasher manufacturing plant that was constructed in two phases in 1991 and 1995.¹ The entire 513,810-square-foot facility is covered by sprinkler and central HVAC systems. About 15% of the total building area consists of office space.

Based on comparative sales/listing information and a *pro forma* operating statement, the taxpayer's representative contended that the subject property should be valued at \$8,270,000 (or \$16.10 per square foot). That figure, she asserted, would be consonant with the appraisal of a "fairly similar" distribution warehouse in nearby Milan that was upheld in Maytag Appliance Sales Co. (Gibson County, Tax Year 2005, Initial Decision and Order, December 16, 2005).

¹The original building contained a base area of 398,810 square feet. The 1995 addition (identified as S/I 003) encompassed about 115,000 square feet, with a much greater ceiling height.

In his analysis of the property under appeal, Mr. Volner considered all three generally recognized approaches to value. Unlike the taxpayer's agent, he adjusted the sale prices of his (five) selected comparables in an attempt to account for significant differences between each of them and the subject.² Mr. Volner estimated replacement cost new (RCN) in his cost approach by applying trending factors to the amounts reflected on the actual building permits obtained during the project.³ Due to the occupancy and use of the subject property for its intended purpose by the original owner, he accorded lesser weight to the income capitalization approach.

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

As the party seeking to change the present valuation of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Ms. Westbrook forthrightly acknowledged at the hearing that she was "not an appraiser." But the Tennessee State Licensing and Certified Real Estate Appraisers Law specifically exempts "any person who is registered with the state board of equalization in accordance with section 67-5-1514 while performing any service of any nature for any taxpayer before any tax or assessment authority, agency, or board of equalization." Hence, without running afoul of the law, the taxpayer's agent could have entered appropriate adjustments in her market data grid.⁴ The lack of such adjustments substantially diminishes the evidentiary weight of her analysis. See Maytag Appliance Sales Co., *supra*, p. 2.

In their income approaches, the parties' estimates of market rent for the subject property (taxpayer = \$2.20 per square foot; Assessor = \$2.50 per square foot) assumed a *triple net lease* arrangement whereby the tenant would be responsible for payment of property taxes. Yet the capitalization rate in Deloitte's written submission (0.1118) included an effective tax rate component. This methodological error had the effect of reducing the indicated value in Ms. Westbrook's *pro forma* by almost one million dollars (\$8,270,000 versus \$9,246,270). Moreover, the agent's capitalization rate was tenuously grounded on the "potential sale price" of

²As Ms. Westbrook pointed out, three of Mr. Volner's comparable sales occurred after the January 1, 2005 reappraisal date. Generally, such post-assessment date events are disregarded in ad valorem tax appeals before the State Board. See Acme Boot Company & Ashland City Industrial Corporation (Cheatham County, Tax Year 1989, Final Decision and Order, August 7, 1990).

³Mr. Volner's total RCN estimate (\$14,104,951) was substantially higher than that shown on the Assessor's property record cards.

⁴Of course, the opinion of a licensed or certified appraiser might be deemed more creditable than that of a registered agent – particularly if the agent were known to have a financial stake in the outcome of an appeal.

the Hollingsworth industrial building referred to in the Maytag Appliance Sales Co. case.⁵ That property was significantly inferior to the subject in land area; ceiling height; percentage of office space; and proximity to the Interstate.

Finally, while Mr. Volner's cost approach on this 15-year-old plant may only establish an upper limit of value, that part of his report was largely uncontested.⁶

For these reasons, the administrative judge cannot conclude that the values determined by the county board were excessive.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2005:

ID	LAND VALUE	IMPRVMT. VALUE	TOTAL VALUE	ASSESSMENT
057-24.02	\$346,800	\$7,786,500	\$8,133,300	\$3,253,320
057-24.02-003	\$0	\$1,960,500	\$1,960,500	\$ 784,200

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

⁵In her *pro forma* income analysis on the Hollingsworth property, Ms. Westbrook projected that it would sell for 90% of the \$4,500,000 asking price. As it turned out, that 284,240-square-foot industrial building and the 25-acre site sold in September, 2005 for \$4,355,625.

⁶Apparently omitted from Mr. Volner's calculation of his cost value (\$14,102,000) was the estimated site value.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of July, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Anna Westbrook, Deloitte Tax, LLP
Frances Hunley, Madison County Assessor of Property
Ray Weatherly, TCA, Supervisor, Jackson Division of Property Assessments

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ATTACHMENT TO INITIAL DECISION AND ORDER

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Maytag Appliance Sales Co.)
District 13, Map 159, Control Map 159, Parcel 29.09) Gibson County
Industrial Property)
Tax year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The Gibson County Board of Equalization has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$254,800	\$6,711,000	\$6,965,800	\$2,786,320

On August 15, 2005, the State Board of Equalization ("State Board") received an appeal on behalf of the property owner.

The undersigned administrative judge conducted a hearing of this matter on November 15, 2005 in Jackson. The taxpayer was represented by registered agent Anna Westbrook, of Deloitte. Gibson County Assessor of Property Linda Tilley was assisted by Larry Ellis, a regional appraisal supervisor for the State Division of Property Assessments (DPA).

Findings of Fact and Conclusions of Law

The property in question is a distribution warehouse situated on a 39+-acre tract in the Milan Industrial Park. As originally built in 1989, this pre-finished metal facility contained 297,000 square feet of space. A 120,640-square-foot addition was constructed in 1992. The structure is fully occupied and used for its intended purpose by the property owner.

The parties agreed that the subject improvement closely resembles a 284,240-square-foot industrial building located on the same highway (4071 Denton Fly Road). On December 22, 2004, after having been vacant for about two years, that property was sold by the city of Milan to a Mr. Hollingsworth for \$2,700,000. Ms. Westbrook did not dispute Mr. Ellis's characterization of that transfer as "almost like a fire sale" (presumably motivated by the city's desire to return the property to the tax roll). Though it was briefly listed for sale at \$4,500,000, 4071 Denton Fly road is currently rented at an annual rate of \$2.26 per square foot.

For 2005 tax purposes, the Hollingsworth property is valued at \$4,765,300. The appellant's larger distribution warehouse, Ms. Westbrook contended, has been inequitably appraised by comparison at nearly the same amount per square foot. Based on comparative

sales and listing data as well as an income analysis, she estimated the market value of the subject property to be \$5,919,000 (\$14.17 per square foot).

Due to the lack of recent sales of similar properties in rural West Tennessee, Mr. Ellis did not attempt a sales comparison approach. His Marshall and Swift cost approach indicated a value of \$10,804,700 for the subject property. Concerned about the extent to which that figure exceeded the Assessor's value, Mr. Ellis also resorted to an income capitalization approach. His *pro forma* statement differed from that of the taxpayer's agent as follows:

	<u>Taxpayer</u>	<u>DPA</u>
Market rent (per square foot)	\$2.00	\$2.20
Vacancy and collection loss	20%	10%
Capitalization rate	10.50%	9.00%

These disparities still left a gulf of over \$2.6 million between the parties.¹

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

As the party seeking to change the present valuation of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

In recognition of the imperfections inherent in mass appraisal systems, the State Board has repeatedly held that the *appraised* value of a purported "comparable" is not relevant to a determination of the *market* value of a property under appeal. See, e.g., Appeal of Stanley Keebler (Washington County, Tax Year 2000, Final Decision and Order, October 22, 2001). Hence the administrative judge must respectfully reject the taxpayer's complaint insofar as it is predicated on the current appraisal of 4071 Denton Fly Road.

Ms. Westbrook's "industrial/light manufacturing comparable property study" is undermined not only by the inclusion of properties from other parts of the state, but also by the lack of adjustments for differences in physical characteristics between the selected comparables and the subject. The fact that the disputed value per square foot (\$16.68) is above the range of the unadjusted sale and listing prices merely begs the question of how similar those comparables really were to the subject property (at the time of sale). Further, the record suggests that some of those sales involved businesses which had closed.

In the opinion of the administrative judge, then, the relative merits of the conflicting income analyses are determinative. Arguably, Mr. Ellis's slight (-3%) adjustment to the \$2.26 rental rate for the Hollingsworth comparable is insufficient. His 10% allowance for vacancy and

¹Mr. Ellis did not, however, recommend an increase in the appraised value of the subject property.

collection loss may also be too optimistic for the appellant's 47% larger warehouse. But even if Ms. Westbrook's projection of net operating income (\$621,448) were adopted, her 10.50% capitalization rate was not well-founded. Whereas Mr. Ellis cited the nationally recognized *Korpacz* investor survey in support of his 9.00% overall rate,² she leaned heavily on the former asking price for the then-idle Hollingsworth property – though it had admittedly been acquired from a governmental entity at a bargain price. Moreover, unlike Mr. Ellis, the taxpayer's agent did not interview Mr. Hollingsworth to ascertain the reliability of his purchase and list prices as market value indicators. Finally, without meaning to disparage Ms. Westbrook, the administrative judge cannot entirely ignore Deloitte's financial stake in the outcome of this appeal by virtue of its contingent fee arrangement.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$254,800	\$6,711,000	\$6,965,800	\$2,786,320

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

²Division of the taxpayer's stabilized NOI (\$621,448) by DPA's capitalization rate (.09) would yield a value within one percent of the challenged appraisal.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of December, 2005.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Anna Westbrook, Deloitte Tax LLP
Larry Ellis, CAE, Supervisor, Jackson Division of Property Assessments
Linda Tilley, Gibson County Assessor of Property

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